

Union Calendar No. 409

109TH CONGRESS
2D SESSION

H. R. 6054

[Report No. 109–664, Parts I and II]

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2006

Mr. HUNTER (for himself, Mr. BOEHNER, Mr. SENSENBRENNER, Mr. CALVERT, Mrs. MILLER of Michigan, Mr. MILLER of Florida, Mr. SHUSTER, Mr. FRANKS of Arizona, Mr. WILSON of South Carolina, Mr. SAXTON, Mr. PORTER, Mr. KLINE, Mr. HEFLEY, Mr. HAYES, Mr. SWEENEY, Mr. CHOCOLA, and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on the Judiciary and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 15, 2006

Reported from the Committee on Armed Services with amendments

[Omit the part struck through and insert the part printed in *italic*]

SEPTEMBER 15, 2006

Referral to the Committees on the Judiciary and International Relations extended for a period ending not later than September 18, 2006

SEPTEMBER 18, 2006

The Committee on International Relations discharged

SEPTEMBER 18, 2006

Referral to the Committee on the Judiciary extended for a period ending not later than September 25, 2006

SEPTEMBER 25, 2006

Additional sponsors: Mr. RENZI, Ms. GRANGER, and Mrs. SCHMIDT

SEPTEMBER 25, 2006

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Military Commissions Act of 2006”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

1. Short title; table of contents.
2. Construction of Presidential authority to establish military commissions.
3. Military commissions.
4. Clarification of conduct constituting war crime offense under Federal Criminal Code.
5. Judicial review.
6. Satisfaction of treaty obligations.
7. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
8. Retroactive applicability.

8 **SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO** 9 **ESTABLISH MILITARY COMMISSIONS.**

10 The authority to establish military commissions
 11 under chapter 47A of title 10, United States Code, as
 12 added by section 3(a), may not be construed to alter or

1 limit the authority of the President under the Constitution
 2 to establish military commissions on the battlefield or in
 3 occupied territories should circumstances so require.

4 **SEC. 3. MILITARY COMMISSIONS.**

5 (a) **MILITARY COMMISSIONS.**—

6 (1) **IN GENERAL.**—Subtitle A of title 10,
 7 United States Code, is amended by inserting after
 8 chapter 47 the following new chapter:

9 **“CHAPTER 47A—MILITARY COMMISSIONS**

“Subchapter

“I. General Provisions 948a

“II. Composition of Military Commissions 948h

“III. Pre-Trial Procedure 948q

“IV. Trial Procedure 949a

“V. Sentences 949s

“VI. Post-Trial Procedure and Review of Military Commissions 950a

“VII. Punitive Matters 950p

10 **“SUBCHAPTER I—GENERAL PROVISIONS**

“Sec.

“948a. Definitions.

“948b. Military commissions generally.

“948c. Persons subject to military commissions.

“948d. Jurisdiction of military commissions.

“948e. Annual report to congressional committees.

11 **“§ 948a. Definitions**

12 “In this chapter:

13 “(1) **UNLAWFUL ENEMY COMBATANT.**—(A) The
 14 term ‘unlawful enemy combatant’ means an indi-
 15 vidual determined by or under the authority of the
 16 President or the Secretary of Defense—

17 “(i) to be part of or affiliated with a force
 18 or organization (including al Qaeda, the

1 Taliban, any international terrorist organiza-
2 tion, or associated forces) that is engaged in
3 hostilities against the United States or its co-
4 belligerents in violation of the law of war;

5 “(ii) to have committed a hostile act in aid
6 of such a force or organization so engaged; or

7 “(iii) to have supported hostilities in aid of
8 such a force or organization so engaged.

9 “(B) Such term includes any individual deter-
10 mined by a Combatant Status Review Tribunal be-
11 fore the date of the enactment of the Military Com-
12 missions Act of 2006 to have been properly detained
13 as an enemy combatant.

14 “(C) Such term does not include any alien de-
15 termined by the President or the Secretary of De-
16 fense (whether on an individualized or collective
17 basis), or by any competent tribunal established
18 under their authority, to be—

19 “(i) a lawful enemy combatant (including a
20 prisoner of war); or

21 “(ii) a protected person whose trial by a
22 military commission under this chapter would
23 be inconsistent with Articles 64 through 76 of
24 the Geneva Convention Relative to the Protec-

1 tion of Civilian Persons in Time of War of Au-
2 gust 12, 1949.

3 “(D) For purposes of subparagraph (C)(ii), the
4 term ‘protected person’ refers to the category of per-
5 sons described in Article 4 of the Geneva Convention
6 Relative to the Protection of Civilian Persons in
7 Time of War of August 12, 1949.

8 “(2) *LAWFUL ENEMY COMBATANT.*—*The term*
9 *‘lawful enemy combatant’ means an individual deter-*
10 *mined by or under the authority of the President or*
11 *Secretary of Defense (whether on an individualized or*
12 *collective basis) to be—*

13 “(A) *a member of the regular forces of a*
14 *State party engaged in hostilities against the*
15 *United States or its co-belligerents;*

16 “(B) *a member of a militia, volunteer corps,*
17 *or organized resistance movement belonging to a*
18 *State party engaged in such hostilities, which*
19 *are under responsible command, wear a fixed*
20 *distinctive sign recognizable at a distance, carry*
21 *their arms openly, and abide by the law of war;*
22 *or*

23 “(C) *a member of a regular armed forces*
24 *who professes allegiance to a government engaged*

1 *in such hostilities, but not recognized by the*
 2 *United States.*

3 “~~(2)~~ (3) GENEVA CONVENTIONS.—The term
 4 ‘Geneva Conventions’ means the international con-
 5 ventions signed at Geneva on August 12, 1949, in-
 6 cluding Common Article 3.

7 “~~(3)~~ (4) CLASSIFIED INFORMATION.—The term
 8 ‘classified information’ means the following:

9 “(A) Any information or material that has
 10 been determined by the United States Govern-
 11 ment pursuant to statute, Executive order, or
 12 regulation to require protection against unau-
 13 thorized disclosure for reasons of national secu-
 14 rity.

15 “(B) Any restricted data, as that term is
 16 defined in section 11 y. of the Atomic Energy
 17 Act of 1954 (42 U.S.C. 2014(y)).

18 “~~(4)~~ (5) ALIEN.—The term ‘alien’ means an in-
 19 dividual who is not a citizen of the United States.

20 **“§ 948b. Military commissions generally**

21 “(a) AUTHORITY FOR MILITARY COMMISSIONS
 22 UNDER THIS CHAPTER.—The President is authorized to
 23 establish military commissions for violations of offenses
 24 triable by military commission as provided in this chapter.

1 “(b) CONSTRUCTION OF PROVISIONS.—The proce-
 2 dures for military commissions set forth in this chapter
 3 are based upon the procedures for trial by general courts-
 4 martial under chapter 47 of this title (the Uniform Code
 5 of Military Justice). Chapter 47 of this title, including any
 6 construction or application of such chapter and any ad-
 7 ministrative practice under such chapter, does not apply
 8 to trial by military commission under this chapter.

9 “(c) STATUS OF COMMISSIONS UNDER COMMON AR-
 10 TICLE 3.—A military commission established under this
 11 chapter is a regularly constituted court, affording all the
 12 necessary ‘judicial guarantees which are recognized as in-
 13 dispensable by civilized peoples’ for purposes of common
 14 Article 3 of the Geneva Conventions.

15 **“§ 948c. Persons subject to military commissions**

16 “Any alien unlawful enemy combatant is subject to
 17 trial by military commission under this chapter.

18 **“§ 948d. Jurisdiction of military commissions**

19 “(a) JURISDICTION.—A military commission under
 20 this chapter shall have jurisdiction to try any offense made
 21 punishable by this chapter when committed by an alien
 22 unlawful enemy combatant before, on, or after September
 23 11, 2001.

24 “(b) *LAWFUL ENEMY COMBATANTS.*—*Military com-*
 25 *missions under this chapter shall not have jurisdiction over*

1 *lawful enemy combatants. Lawful enemy combatants who*
 2 *violate the law of war are subject to chapter 47 of this title.*
 3 *Courts martial established under that chapter shall have ju-*
 4 *risdiction to try a lawful enemy combatant for any offense*
 5 *made punishable under this chapter.*

6 “(b) (c) PUNISHMENTS.—A military commission
 7 under this chapter may, under such limitations as the Sec-
 8 retary of Defense may prescribe, adjudge any punishment
 9 not forbidden by this chapter, including the penalty of
 10 death when authorized under this chapter.

11 **“§ 948e. Annual report to congressional committees**

12 “(a) ANNUAL REPORT REQUIRED.—Not later than
 13 December 31 each year, the Secretary of Defense shall
 14 submit to the Committees on Armed Services of the Sen-
 15 ate and the House of Representatives a report on any
 16 trials conducted by military commissions under this chap-
 17 ter during such year.

18 “(b) FORM.—Each report under this section shall be
 19 submitted in unclassified form, but may include a classi-
 20 fied annex.

21 **“SUBCHAPTER II—COMPOSITION OF MILITARY**
 22 **COMMISSIONS**

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judges.

“948k. Detail of trial counsel and defense counsel.

“948l. Detail or employment of reporters and interpreters.

“948m. Number of members; excuse of members; absent and additional members.

1 **“§ 948h. Who may convene military commissions**

2 “Military commissions under this chapter may be
3 convened by the Secretary of Defense or by any officer
4 or official of the United States designated by the Secretary
5 for that purpose.

6 **“§ 948i Who may serve on military commissions**

7 “(a) IN GENERAL.—Any commissioned officer of the
8 armed forces on active duty is eligible to serve on a mili-
9 tary commission under this chapter.

10 “(b) DETAIL OF MEMBERS.—When convening a mili-
11 tary commission under this chapter, the convening author-
12 ity shall detail as members of the commission such mem-
13 bers of the armed forces eligible under subsection (a), as
14 in the opinion of the convening authority, are fully quali-
15 fied for the duty by reason of age, education, training,
16 experience, length of service, and judicial temperament.
17 No member of an armed force is eligible to serve as a
18 member of a military commission when such member is
19 the accuser or a witness for the prosecution or has acted
20 as an investigator or counsel in the same case.

21 “(c) EXCUSE OF MEMBERS.—Before a military com-
22 mission under this chapter is assembled for the trial of
23 a case, the convening authority may excuse a member
24 from participating in the case.

1 **“§ 948j. Military judges**

2 “(a) **DETAIL OF MILITARY JUDGE.**—A military judge
3 shall be detailed to each military commission under this
4 chapter. The Secretary of Defense shall prescribe regula-
5 tions providing for the manner in which military judges
6 are so detailed to military commissions. The military judge
7 shall preside over each military commission to which he
8 has been detailed.

9 “(b) **QUALIFICATIONS.**—A military judge shall be a
10 commissioned officer of the armed forces who is a member
11 of the bar of a Federal court, or a member of the bar
12 of the highest court of a State, and who is certified to
13 be qualified for duty under section 826 of this title (article
14 26 of the Uniform Code of Military Justice) as a military
15 judge in general courts-martial by the Judge Advocate
16 General of the armed force of which such military judge
17 is a member.

18 “(c) **INELIGIBILITY OF CERTAIN INDIVIDUALS.**—No
19 person is eligible to act as military judge in a case of a
20 military commission under this chapter if he is the accuser
21 or a witness or has acted as investigator or a counsel in
22 the same case.

23 “(d) **CONSULTATION WITH MEMBERS; INELIGI-**
24 **BILITY TO VOTE.**—A military judge detailed to a military
25 commission under this chapter may not consult with the
26 members of the commission except in the presence of the

1 accused (except as otherwise provided in section 949d of
2 this title), trial counsel, and defense counsel, nor may he
3 vote with the members of the commission.

4 “(e) OTHER DUTIES.—A commissioned officer who
5 is certified to be qualified for duty as a military judge of
6 a military commission under this chapter may perform
7 such other duties as are assigned to him by or with the
8 approval of the Judge Advocate General of the armed
9 force of which such officer is a member or the designee
10 of such Judge Advocate General.

11 “(f) PROHIBITION ON EVALUATION OF FITNESS BY
12 CONVENING AUTHORITY.—The convening authority of a
13 military commission under this chapter shall not prepare
14 or review any report concerning the effectiveness, fitness,
15 or efficiency of a military judge detailed to the military
16 commission which relates to his performance of duty as
17 a military judge on the military commission.

18 **“§ 948k. Detail of trial counsel and defense counsel**

19 “(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial
20 counsel and military defense counsel shall be detailed for
21 each military commission under this chapter.

22 “(2) Assistant trial counsel and assistant and asso-
23 ciate defense counsel may be detailed for a military com-
24 mission under this chapter.

1 “(3) Military defense counsel for a military commis-
2 sion under this chapter shall be detailed as soon as prac-
3 ticable after the swearing of charges against the accused.

4 “(4) The Secretary of Defense shall prescribe regula-
5 tions providing for the manner in which trial counsel and
6 military defense counsel are detailed for military commis-
7 sions under this chapter and for the persons who are au-
8 thorized to detail such counsel for such commissions.

9 “(b) TRIAL COUNSEL.—Subject to subsection (d),
10 trial counsel detailed for a military commission under this
11 chapter must be—

12 “(1) a judge advocate (as that term is defined
13 in section 801 of this title (article 1 of the Uniform
14 Code of Military Justice) who is—

15 “(A) a graduate of an accredited law
16 school or is a member of the bar of a Federal
17 court or of the highest court of a State; and

18 “(B) certified as competent to perform du-
19 ties as trial counsel before general courts-mar-
20 tial by the Judge Advocate General of the
21 armed force of which he is a member; or

22 “(2) a civilian who is—

23 “(A) a member of the bar of a Federal
24 court or of the highest court of a State; and

1 “(B) otherwise qualified to practice before
2 the military commission pursuant to regulations
3 prescribed by the Secretary of Defense.

4 “(c) MILITARY DEFENSE COUNSEL.—Subject to sub-
5 section (d), military defense counsel detailed for a military
6 commission under this chapter must be a judge advocate
7 (as so defined) who is—

8 “(1) a graduate of an accredited law school or
9 is a member of the bar of a Federal court or of the
10 highest court of a State; and

11 “(2) certified as competent to perform duties as
12 defense counsel before general courts-martial by the
13 Judge Advocate General of the armed force of which
14 he is a member.

15 “(d) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
16 person who has acted as an investigator, military judge,
17 or member of a military commission under this chapter
18 in any case may act later as trial counsel or military de-
19 fense counsel in the same case. No person who has acted
20 for the prosecution before a military commission under
21 this chapter may act later in the same case for the de-
22 fense, nor may any person who has acted for the defense
23 before a military commission under this chapter act later
24 in the same case for the prosecution.

1 **“§ 948l. Detail or employment of reporters and inter-**
2 **preters**

3 “(a) COURT REPORTERS.—Under such regulations
4 as the Secretary of Defense may prescribe, the convening
5 authority of a military commission under this chapter
6 shall detail to or employ for the commission qualified court
7 reporters, who shall make a verbatim recording of the pro-
8 ceedings of and testimony taken before the commission.

9 “(b) INTERPRETERS.—Under such regulations as the
10 Secretary of Defense may prescribe, the convening author-
11 ity of a military commission under this chapter may detail
12 to or employ for the military commission interpreters who
13 shall interpret for the commission and, as necessary, for
14 trial counsel and defense counsel.

15 “(c) TRANSCRIPT; RECORD.—The transcript of a
16 military commission under this chapter shall be under the
17 control of the convening authority of the commission, who
18 shall also be responsible for preparing the record of the
19 proceedings.

20 **“§ 948m. Number of members; excuse of members; ab-**
21 **sent and additional members**

22 “(a) NUMBER OF MEMBERS.—(1) A military com-
23 mission under this chapter shall, except as provided in
24 paragraph (2), have at least five members.

1 “(2) In a case in which the death penalty is sought,
 2 the military commission shall have the number of members
 3 prescribed by section 949m(c) of this title.

4 “(b) EXCUSE OF MEMBERS.—No member of a mili-
 5 tary commission under this chapter may be absent or ex-
 6 cused after the military commission has been assembled
 7 for the trial of a case unless excused—

8 “(1) as a result of challenge;

9 “(2) by the military judge for physical disability
 10 or other good cause; or

11 “(3) by order of the convening authority for
 12 good cause.

13 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-
 14 ever a military commission under this chapter is reduced
 15 below the number of members required by subsection (a),
 16 the trial may not proceed unless the convening authority
 17 details new members sufficient to provide not less than
 18 such number. The trial may proceed with the new mem-
 19 bers present after the recorded evidence previously intro-
 20 duced before the members has been read to the military
 21 commission in the presence of the military judge, the ac-
 22 cused (except as provided in section 949d of this title),
 23 and counsel for both sides.

24 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements.

“948s. Service of charges.

1 **“§ 948q. Charges and specifications**

2 “(a) CHARGES AND SPECIFICATIONS.—Charges and
3 specifications against an accused in a military commission
4 under this chapter shall be signed by a person subject to
5 chapter 47 of this title under oath before a commissioned
6 officer of the armed forces authorized to administer oaths
7 and shall state—

8 “(1) that the signer has personal knowledge of,
9 or reason to believe, the matters set forth therein;
10 and

11 “(2) that they are true in fact to the best of the
12 signer’s knowledge and belief.

13 “(b) NOTICE TO ACCUSED.—Upon the swearing of
14 the charges and specifications in accordance with sub-
15 section (a), the accused shall be informed of the charges
16 against him as soon as practicable.

17 **“§ 948r. Compulsory self-incrimination prohibited;**
18 **treatment of statements obtained by tor-**
19 **ture and other statements**

20 “(a) IN GENERAL.—No person shall be required to
21 testify against himself at a proceeding of a military com-
22 mission under this chapter.

23 “(b) EXCLUSION OF STATEMENTS OBTAINED BY
24 TORTURE.—A statement obtained by use of torture,

1 whether or not under color of law, shall not be admissible
 2 against the accused in a military commission under this
 3 chapter, except against a person accused of torture as evi-
 4 dence the statement was made.

5 “(c) OTHER STATEMENTS.—An otherwise admissible
 6 statement, including a statement allegedly obtained by co-
 7 ercion, shall not be admitted in evidence in a military com-
 8 mission under this chapter if the military judge finds that
 9 the circumstances under which the statement was made
 10 render the statement unreliable or lacking in probative
 11 value.

12 “(d) TORTURE.—In this section, the term ‘torture’
 13 has the meaning given that term in section 2340 of title
 14 18.

15 **“§ 948s. Service of charges**

16 “The trial counsel assigned to a case before a military
 17 commission under this chapter shall cause to be served
 18 upon the accused and military defense counsel a copy of
 19 the charges upon which trial is to be had. Such charges
 20 shall be served in English and, if appropriate, in another
 21 language that the accused understands. Such service shall
 22 be made sufficiently in advance of trial to prepare a de-
 23 fense.

24 **“SUBCHAPTER IV—TRIAL PROCEDURE**

“Sec.

“949a. Rules.

“949b. Unlawfully influencing action of military commission.

“949e. Duties of trial counsel and defense counsel.
 “949d. Sessions.
 “949e. Continuances.
 “949f. Challenges.
 “949g. Oaths.
 “949h. Former jeopardy.
 “949i. Pleas of the accused.
 “949j. Opportunity to obtain witnesses and other evidence.
 “949k. Defense of lack of mental responsibility.
 “949l. Voting and rulings.
 “949m. Number of votes required.
 “949n. Military commission to announce action.
 “949o. Record of trial.

1 **“§ 949a. Rules**

2 “(a) PROCEDURES.—Pretrial, trial, and post-trial
 3 procedures, including elements and modes of proof, for
 4 cases triable by military commission under this chapter
 5 shall be prescribed by the Secretary of Defense, but may
 6 not be contrary to or inconsistent with this chapter.

7 “(b) RULES OF EVIDENCE.—(1) Subject to such ex-
 8 ceptions and limitations as the Secretary may prescribe
 9 by regulation, evidence in a military commission under
 10 this chapter shall be admissible if the military judge deter-
 11 mines that the evidence would have probative value to a
 12 reasonable person.

13 “(2) Hearsay evidence is admissible unless the mili-
 14 tary judge finds that the circumstances render the evi-
 15 dence unreliable or lacking in probative value. However,
 16 such evidence may be admitted only if the proponent of
 17 the evidence makes the evidence known to the adverse
 18 party in advance of trial or hearing.

1 “(3) The military judge shall exclude any evidence
2 the probative value of which is substantially outweighed—

3 “(A) by the danger of unfair prejudice, confu-
4 sion of the issues, or misleading the members of the
5 commission; or

6 “(B) by considerations of undue delay, waste of
7 time, or needless presentation of cumulative evi-
8 dence.

9 “(c) NOTIFICATION TO CONGRESSIONAL COMMIT-
10 TEES OF CHANGES TO PROCEDURES.—Not later than 60
11 days before the date on which any proposed modification
12 of the procedures in effect for military commissions under
13 this chapter goes into effect, the Secretary of Defense
14 shall submit to the Committee on Armed Services of the
15 Senate and the Committee on Armed Services of the
16 House of Representatives a report describing the modifica-
17 tion.

18 **“§ 949b. Unlawfully influencing action of military**
19 **commission**

20 “(a) IN GENERAL.—(1) No authority convening a
21 military commission under this chapter may censure, rep-
22 rimand, or admonish the military commission, or any
23 member, military judge, or counsel thereof, with respect
24 to the findings or sentence adjudged by the military com-

1 mission, or with respect to any other exercises of its or
2 his functions in the conduct of the proceedings.

3 “(2) No person may attempt to coerce or, by any un-
4 authorized means, influence the action of a military com-
5 mission under this chapter, or any member thereof, in
6 reaching the findings or sentence in any case, or the action
7 of any convening, approving, or reviewing authority with
8 respect to his judicial acts.

9 “(3) Paragraphs (1) and (2) do not apply with re-
10 spect to—

11 “(A) general instructional or informational
12 courses in military justice if such courses are de-
13 signed solely for the purpose of instructing members
14 of a command in the substantive and procedural as-
15 pects of military commissions; or

16 “(B) statements and instructions given in open
17 proceedings by a military judge or counsel.

18 “(b) PROHIBITION ON CONSIDERATION OF ACTIONS
19 ON COMMISSION IN EVALUATION OF FITNESS.—In the
20 preparation of an effectiveness, fitness, or efficiency report
21 or any other report or document used in whole or in part
22 for the purpose of determining whether a commissioned
23 officer of the armed forces is qualified to be advanced in
24 grade, or in determining the assignment or transfer of any

1 such officer or whether any such officer should be retained
2 on active duty, no person may—

3 “(1) consider or evaluate the performance of
4 duty of any member of a military commission under
5 this chapter; or

6 “(2) give a less favorable rating or evaluation
7 to any commissioned officer because of the zeal with
8 which such officer, in acting as counsel, represented
9 any accused before a military commission under this
10 chapter.

11 **“§ 949c. Duties of trial counsel and defense counsel**

12 “(a) TRIAL COUNSEL.—The trial counsel of a mili-
13 tary commission under this chapter shall prosecute in the
14 name of the United States.

15 “(b) DEFENSE COUNSEL.—(1) The accused shall be
16 represented in his defense before a military commission
17 under this chapter as provided in this subsection.

18 “(2) The accused shall be represented by military
19 counsel detailed under section 948k of this title.

20 “(3) The accused may be represented by civilian
21 counsel if retained by the accused, but only if such civilian
22 counsel—

23 “(A) is a United States citizen;

1 “(B) is admitted to the practice of law in a
2 State, district, or possession of the United States or
3 before a Federal court;

4 “(C) has not been the subject of any sanction
5 of disciplinary action by any court, bar, or other
6 competent governmental authority for relevant mis-
7 conduct;

8 “(D) has been determined to be eligible for ac-
9 cess to classified information that is classified at the
10 level Secret or higher; and

11 “(E) has signed a written agreement to comply
12 with all applicable regulations or instructions for
13 counsel, including any rules of court for conduct
14 during the proceedings.

15 “(4) Civilian defense counsel shall protect any classi-
16 fied information received during the course of representa-
17 tion of the accused in accordance with all applicable law
18 governing the protection of classified information and may
19 not divulge such information to any person not authorized
20 to receive it.

21 “(5) If the accused is represented by civilian counsel,
22 military counsel detailed shall act as associate counsel.

23 “(6) The accused is not entitled to be represented by
24 more than one military counsel. However, the person au-
25 thorized under regulations prescribed under section 948k

1 of this title to detail counsel, in that person's sole discre-
2 tion, may detail additional military counsel to represent
3 the accused.

4 “(7) Defense counsel may cross-examine each witness
5 for the prosecution who testifies before a military commis-
6 sion under this chapter.

7 **“§ 949d. Sessions**

8 “(a) SESSIONS WITHOUT PRESENCE OF MEM-
9 BERS.—(1) At any time after the service of charges which
10 have been referred for trial by military commission under
11 this chapter, the military judge may call the military com-
12 mission into session without the presence of the members
13 for the purpose of—

14 “(A) hearing and determining motions raising
15 defenses or objections which are capable of deter-
16 mination without trial of the issues raised by a plea
17 of not guilty;

18 “(B) hearing and ruling upon any matter which
19 may be ruled upon by the military judge under this
20 chapter, whether or not the matter is appropriate for
21 later consideration or decision by the members;

22 “(C) if permitted by regulations prescribed by
23 the Secretary of Defense, receiving the pleas of the
24 accused; and

1 “(D) performing any other procedural function
2 which may be performed by the military judge under
3 this chapter or under rules prescribed pursuant to
4 section 949a of this title and which does not require
5 the presence of the members.

6 “(2) Except as provided in subsections (c), (d), and
7 (e), any proceedings under paragraph (1) shall—

8 “(A) be conducted in the presence of the ac-
9 cused, defense counsel, and trial counsel; and

10 “(B) be made part of the record.

11 “(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—
12 Except as provided in subsections (c) and (e), all pro-
13 ceedings of a military commission under this chapter, in-
14 cluding any consultation of the members with the military
15 judge or counsel, shall—

16 “(1) be in the presence of the accused, defense
17 counsel, and trial counsel; and

18 “(2) be made a part of the record.

19 “(c) DELIBERATION OR VOTE OF MEMBERS.—When
20 the members of a military commission under this chapter
21 deliberate or vote, only the members may be present.

22 “(d) CLOSURE OF PROCEEDINGS.—(1) The military
23 judge may close to the public all or part of the proceedings
24 of a military commission under this chapter, but only in
25 accordance with this subsection.

1 “(2)(A) The military judge may close to the public
2 all or a portion of the proceedings of a military commis-
3 sion under paragraph (1), or permit the admission of clas-
4 sified information outside the presence of the accused,
5 based upon a presentation (including an ex parte or in
6 camera presentation) by either the prosecution or the de-
7 fense.

8 “(B) Trial counsel may not make a presentation re-
9 questing the admission of classified information outside
10 the presence of the accused unless the head of the depart-
11 ment or agency which has control over the matter (after
12 personal consideration by that officer) certifies in writing
13 to the military judge that—

14 “(i) the disclosure of the classified information
15 to the accused could reasonably be expected to prej-
16 udice the national security; and

17 “(ii) that such evidence has been declassified to
18 the maximum extent possible, consistent with the re-
19 quirements of national security.

20 “(3) The military judge may close to the public all
21 or a portion of the proceedings of a military commission
22 under paragraph (1) upon making a specific finding that
23 such closure is necessary to—

24 “(A) protect information the disclosure of which
25 could reasonably be expected to cause identifiable

1 damage to the public interest or the national secu-
2 rity, including intelligence or law enforcement
3 sources, methods, or activities; or

4 “(B) ensure the physical safety of individuals.

5 “(e) EXCLUSION OF ACCUSED FROM CERTAIN PRO-
6 CEEDINGS.—(1) The military judge may not exclude the
7 accused from any portion of the proceeding except upon
8 a specific finding of each of the following:

9 “(A) That the exclusion of the accused—

10 “(i) is necessary to protect classified infor-
11 mation the disclosure of which to the accused
12 could reasonably be expected to cause identifi-
13 able damage to the national security, including
14 intelligence or law enforcement sources, meth-
15 ods, or activities;

16 “(ii) is necessary to ensure the physical
17 safety of individuals; or

18 “(iii) is necessary to prevent disruption of
19 the proceedings by the accused.

20 “(B) That the exclusion of the accused—

21 “(i) is no broader than necessary; and

22 “(ii) will not deprive the accused of a full
23 and fair trial.

1 “(2)(A) A finding under paragraph (1) may be based
2 upon a presentation, including a presentation ex parte or
3 in camera, by either trial counsel or defense counsel.

4 “(B) Before trial counsel may make a presentation
5 for purposes of subparagraph (A) requesting the admis-
6 sion of classified information that has not been provided
7 to the accused, the head of the executive or military de-
8 partment or governmental agency concerned shall ensure,
9 and shall certify in writing to the military judge, that such
10 evidence has been declassified to the maximum extent pos-
11 sible, consistent with the requirements of national secu-
12 rity.

13 “(3)(A) No evidence may be admitted that has not
14 been provided to the accused unless the evidence is classi-
15 fied information and the military judge makes a specific
16 finding that—

17 “(i) consideration of that evidence by the mili-
18 tary commission, without the presence of the ac-
19 cused, is warranted;

20 “(ii) admission of an unclassified summary or
21 redacted version of that evidence would not be an
22 adequate substitute and, in the case of testimony, al-
23 ternative methods to obscure the identity of the wit-
24 ness are not adequate; and

1 “(iii) admission of the evidence would not de-
2 prive the accused of a full and fair trial.

3 “(B) If the accused is excluded from a portion of the
4 proceedings, the accused shall be provided with a redacted
5 transcript of the proceedings from which excluded and, to
6 the extent practicable, an unclassified summary of any evi-
7 dence introduced. Under no circumstances shall such a
8 summary or redacted transcript compromise the interests
9 warranting the exclusion of the accused under paragraph
10 (1).

11 “(4)(A) Military defense counsel shall be present and
12 able to participate in all trial proceedings and shall be
13 given access to all evidence admitted under paragraph (3).

14 “(B) Civilian defense counsel shall be permitted to
15 be present and to participate in proceedings from which
16 the accused is excluded under this subsection, and shall
17 be given access to classified information admitted under
18 this subsection, if—

19 “(i) civilian defense counsel has obtained the
20 necessary security clearances; and

21 “(ii) the presence of civilian defense counsel or
22 access of civilian defense counsel to such informa-
23 tion, as applicable, is consistent with regulations to
24 protect classified information that the Secretary of
25 Defense may prescribe.

1 “(C) Any defense counsel who receives classified in-
2 formation admitted under this subsection shall not be obli-
3 gated to, and may not, disclose that information to the
4 accused.

5 “(D) At all times the accused must have defense
6 counsel with sufficient security clearance to participate in
7 any proceeding, including an ex parte or in camera presen-
8 tation, with respect to classified information.

9 “(5) If evidence has been admitted under this sub-
10 section that has not been provided to the accused, the
11 judge shall instruct the members of the commission—

12 “(A) that such evidence was so admitted; and

13 “(B) that, in weighing the value of that evi-
14 dence, the commission shall consider the fact that
15 such evidence was admitted without having been
16 provided to the accused.

17 “(f) ADMISSION OF STATEMENTS OF ACCUSED.—(1)
18 A statement described in paragraph (2) that is made by
19 the accused during an interrogation, even if otherwise
20 classified, may not be admitted into evidence in a military
21 commission under this chapter unless the accused is
22 present for the admission of the statement into evidence
23 or the statement is otherwise provided to the accused.

24 “(2) A statement of an accused described in this
25 paragraph is a statement communicated knowingly and di-

1 rectly by the accused in response to questioning by United
 2 States or foreign military, intelligence, or criminal inves-
 3 tigative personnel.

4 “(3) This subsection shall not be construed to prevent
 5 the redaction of intelligence sources or methods, which do
 6 not constitute statements of the accused, from any docu-
 7 ment provided to the accused or admitted into evidence.

8 **“§ 949e. Continuances**

9 “The military judge in a military commission under
 10 this chapter may, for reasonable cause, grant a continu-
 11 ance to any party for such time, and as often, as may
 12 appear to be just.

13 **“§ 949f. Challenges**

14 “(a) CHALLENGES AUTHORIZED.—The military
 15 judge and members of a military commission under this
 16 chapter may be challenged by the accused or trial counsel
 17 for cause stated to the commission. The military judge
 18 shall determine the relevance and validity of challenges for
 19 cause. The military judge may not receive a challenge to
 20 more than one person at a time. Challenges by trial coun-
 21 sel shall ordinarily be presented and decided before those
 22 by the accused are offered.

23 “(b) PEREMPTORY CHALLENGES.—Each accused
 24 and the trial counsel are entitled to one peremptory chal-

1 lenge. The military judge may not be challenged except
2 for cause.

3 “(c) CHALLENGES AGAINST ADDITIONAL MEM-
4 BERS.—Whenever additional members are detailed to a
5 military commission under this chapter, and after any
6 challenges for cause against such additional members are
7 presented and decided, each accused and the trial counsel
8 are entitled to one peremptory challenge against members
9 not previously subject to peremptory challenge.

10 **“§ 949g. Oaths**

11 “(a) IN GENERAL.—(1) Before performing their re-
12 spective duties in a military commission under this chap-
13 ter, military judges, members, trial counsel, defense coun-
14 sel, reporters, and interpreters shall take an oath to per-
15 form their duties faithfully.

16 “(2) The form of the oath required by paragraph (1),
17 the time and place of the taking thereof, the manner of
18 recording the same, and whether the oath shall be taken
19 for all cases in which duties are to be performed or for
20 a particular case, shall be as prescribed in regulations of
21 the Secretary of Defense. Those regulations may provide
22 that—

23 “(A) an oath to perform faithfully duties as a
24 military judge, trial counsel, or defense counsel may
25 be taken at any time by any judge advocate or other

1 person certified to be qualified or competent for the
 2 duty; and

3 “(B) if such an oath is taken, such oath need
 4 not again be taken at the time the judge advocate
 5 or other person is detailed to that duty.

6 “(b) WITNESSES.—Each witness before a military
 7 commission under this chapter shall be examined on oath.

8 **“§ 949h. Former jeopardy**

9 “(a) IN GENERAL.—No person may, without his con-
 10 sent, be tried by a military commission under this chapter
 11 a second time for the same offense.

12 “(b) SCOPE OF TRIAL.—No proceeding in which the
 13 accused has been found guilty by military commission
 14 under this chapter upon any charge or specification is a
 15 trial in the sense of this section until the finding of guilty
 16 has become final after review of the case has been fully
 17 completed.

18 **“§ 949i. Pleas of the accused**

19 “(a) ENTRY OF PLEA OF NOT GUILTY.—If an ac-
 20 cused in a military commission under this chapter after
 21 a plea of guilty sets up matter inconsistent with the plea,
 22 or if it appears that the accused has entered the plea of
 23 guilty through lack of understanding of its meaning and
 24 effect, or if the accused fails or refuses to plead, a plea
 25 of not guilty shall be entered in the record, and the mili-

1 tary commission shall proceed as though the accused had
2 pleaded not guilty.

3 “(b) FINDING OF GUILT AFTER GUILTY PLEA.—

4 With respect to any charge or specification to which a plea
5 of guilty has been made by the accused in a military com-
6 mission under this chapter and accepted by the military
7 judge, a finding of guilty of the charge or specification
8 may be entered immediately without a vote. The finding
9 shall constitute the finding of the commission unless the
10 plea of guilty is withdrawn prior to announcement of the
11 sentence, in which event the proceedings shall continue as
12 though the accused had pleaded not guilty.

13 **“§ 949j. Opportunity to obtain witnesses and other**
14 **evidence**

15 “(a) RIGHT OF DEFENSE COUNSEL.—Defense coun-
16 sel in a military commission under this chapter shall have
17 a reasonable opportunity to obtain witnesses and other evi-
18 dence, including evidence in the possession of the United
19 States, as provided in regulations prescribed by the Sec-
20 retary of Defense.

21 “(b) PROCESS FOR COMPULSION.—Process issued in
22 a military commission under this chapter to compel wit-
23 nesses to appear and testify and to compel the production
24 of other evidence—

1 “(1) shall be similar to that which courts of the
2 United States having criminal jurisdiction may law-
3 fully issue; and

4 “(2) shall run to any place where the United
5 States shall have jurisdiction thereof.

6 “(c) TREATMENT OF CLASSIFIED INFORMATION.—
7 The military judge in a military commission under this
8 chapter, upon a sufficient showing, may authorize trial
9 counsel, in making documents available to the accused
10 through discovery conducted pursuant to such rules as the
11 Secretary of Defense shall prescribe, to delete specified
12 items of classified information from such documents and,
13 when such a deletion is made—

14 “(1) to substitute an unclassified summary of
15 the classified information in such documents; or

16 “(2) to substitute an unclassified statement ad-
17 mitting relevant facts that classified information in
18 such documents would tend to prove.

19 “(d) DISCLOSURE OF EXCULPATORY EVIDENCE.—
20 (1) As soon as practicable, trial counsel in a military com-
21 mission under this chapter shall disclose to the defense
22 the existence of any evidence known to trial counsel that
23 reasonably tends to exculpate the accused.

24 “(2) Exculpatory evidence that consists of classified
25 information may be provided solely to defense counsel, and

1 not the accused, after review in camera by the military
2 judge.

3 “(3) Before evidence may be withheld from the ac-
4 cused under this subsection, the head of the executive or
5 military department or government agency concerned shall
6 ensure, and shall certify in writing to the military judge,
7 that—

8 “(A) the disclosure of such evidence to the ac-
9 cused could reasonably be expected to prejudice the
10 national security; and

11 “(B) such evidence has been declassified to the
12 maximum extent possible, consistent with the re-
13 quirements of national security.

14 “(4) Any classified exculpatory evidence that is not
15 disclosed to the accused under this subsection—

16 “(A) shall be provided to military defense coun-
17 sel;

18 “(B) shall be provided to civilian defense coun-
19 sel, if civilian defense counsel has obtained the nec-
20 essary security clearances and access to such evi-
21 dence is consistent with regulations that the Sec-
22 retary may prescribe to protect classified informa-
23 tion; and

24 “(C) shall be provided to the accused in a re-
25 dacted or summary form, if it is possible to do so

1 without compromising intelligence sources, methods,
 2 or activities or other national security interests.

3 “(5) A defense counsel who receives *classified* evidence
 4 under this subsection shall not be obligated to, and may
 5 not, disclose that evidence to the accused.

6 **“§ 949k. Defense of lack of mental responsibility**

7 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative
 8 defense in a trial by military commission under this chap-
 9 ter that, at the time of the commission of the acts consti-
 10 tuting the offense, the accused, as a result of a severe
 11 mental disease or defect, was unable to appreciate the na-
 12 ture and quality or the wrongfulness of the acts. Mental
 13 disease or defect does not otherwise constitute a defense.

14 “(b) BURDEN OF PROOF.—The accused in a military
 15 commission under this chapter has the burden of proving
 16 the defense of lack of mental responsibility by clear and
 17 convincing evidence.

18 “(c) FINDINGS FOLLOWING ASSERTION OF DE-
 19 FENSE.—Whenever lack of mental responsibility of the ac-
 20 cused with respect to an offense is properly at issue in
 21 a military commission under this chapter, the military
 22 judge shall instruct the members of the commission as to
 23 the defense of lack of mental responsibility under this sec-
 24 tion and shall charge them to find the accused—

25 “(1) guilty;

1 “(2) not guilty; or

2 “(3) subject to subsection (d), not guilty by rea-
3 son of lack of mental responsibility.

4 “(d) MAJORITY VOTE REQUIRED FOR FINDING.—

5 The accused shall be found not guilty by reason of lack
6 of mental responsibility under subsection (c)(3) only if a
7 majority of the members present at the time the vote is
8 taken determines that the defense of lack of mental re-
9 sponsibility has been established.

10 **“§ 949l. Voting and rulings**

11 “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting
12 by members of a military commission under this chapter
13 on the findings and on the sentence shall be by secret writ-
14 ten ballot.

15 “(b) RULINGS.—(1) The military judge in a military
16 commission under this chapter shall rule upon all ques-
17 tions of law, including the admissibility of evidence and
18 all interlocutory questions arising during the proceedings.

19 “(2) Any ruling made by the military judge upon a
20 question of law or an interlocutory question (other than
21 the factual issue of mental responsibility of the accused)
22 is conclusive and constitutes the ruling of the military
23 commission. However, a military judge may change his
24 ruling at any time during the trial.

1 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote
2 is taken of the findings of a military commission under
3 this chapter, the military judge shall, in the presence of
4 the accused and counsel, instruct the members as to the
5 elements of the offense and charge them—

6 “(1) that the accused must be presumed to be
7 innocent until his guilt is established by legal and
8 competent evidence beyond a reasonable doubt;

9 “(2) that in the case being considered, if there
10 is a reasonable doubt as to the guilt of the accused,
11 the doubt must be resolved in favor of the accused
12 and he must be acquitted;

13 “(3) that, if there is reasonable doubt as to the
14 degree of guilt, the finding must be in a lower de-
15 gree as to which there is no reasonable doubt; and

16 “(4) that the burden of proof to establish the
17 guilt of the accused beyond a reasonable doubt is
18 upon the United States.

19 **“§ 949m. Number of votes required**

20 “(a) CONVICTION.—No person may be convicted by
21 a military commission under this chapter of any offense,
22 except as provided in section 949i(b) of this title or by
23 concurrence of two-thirds of the members present at the
24 time the vote is taken.

1 “(b) SENTENCES.—(1) No person may be sentenced
2 by a military commission to suffer death, except insofar
3 as—

4 “(A) the penalty of death is expressly author-
5 ized under this chapter for an offense of which the
6 accused has been found guilty;

7 “(B) trial counsel expressly sought the penalty
8 of death by filing an appropriate notice in advance
9 of trial;

10 “(C) the accused is convicted of the offense by
11 the concurrence of all the members; and

12 “(D) all the members concur in the sentence of
13 death.

14 “(2) No person may be sentenced to life imprison-
15 ment, or to confinement for more than 10 years, by a mili-
16 tary commission under this chapter except by the concur-
17 rence of three-fourths of the members present at the time
18 the vote is taken.

19 “(3) All other sentences shall be determined by a
20 military commission by the concurrence of two-thirds of
21 the members present at the time the vote is taken.

22 “(c) NUMBER OF MEMBERS REQUIRED FOR PEN-
23 ALTY OF DEATH.—(1) Except as provided in paragraph
24 (2), in a case in which the penalty of death is sought, the

1 number of members of the military commission under this
2 chapter shall be not less than 12.

3 “(2) In any case described in paragraph (1) in which
4 12 members are not reasonably available because of phys-
5 ical conditions or military exigencies, the convening au-
6 thority shall specify a lesser number of members for the
7 military commission (but not fewer than 9 members), and
8 the military commission may be assembled, and the trial
9 held, with not fewer than the number of members so speci-
10 fied. In such a case, the convening authority shall make
11 a detailed written statement, to be appended to the record,
12 stating why a greater number of members were not rea-
13 sonably available.

14 **“§ 949n. Military commission to announce action**

15 “A military commission under this chapter shall an-
16 nounce its findings and sentence to the parties as soon
17 as determined.

18 **“§ 949o. Record of trial**

19 “(a) RECORD; AUTHENTICATION.—Each military
20 commission under this chapter shall keep a separate, ver-
21 batim, record of the proceedings in each case brought be-
22 fore it, and the record shall be authenticated by the signa-
23 ture of the military judge. If the record cannot be authen-
24 ticated by the military judge by reason of his death, dis-
25 ability, or absence, it shall be authenticated by the signa-

1 ture of the trial counsel or by a member of the commission
 2 if the trial counsel is unable to authenticate it by reason
 3 of his death, disability, or absence. Where appropriate,
 4 and as provided in regulations prescribed by the Secretary
 5 of Defense, the record of a military commission under this
 6 chapter may contain a classified annex.

7 “(b) COMPLETE RECORD REQUIRED.—A complete
 8 record of the proceedings and testimony shall be prepared
 9 in every military commission under this chapter.

10 “(c) PROVISION OF COPY TO ACCUSED.—A copy of
 11 the record of the proceedings of the military commission
 12 under this chapter shall be given the accused as soon as
 13 it is authenticated. If the record contains classified infor-
 14 mation, or a classified annex, the accused shall be given
 15 a redacted version of the record. The appropriate defense
 16 counsel shall have access to the unredacted record, as pro-
 17 vided in regulations prescribed by the Secretary of De-
 18 fense.

19 “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

20 “§ 949s. Cruel or unusual punishments prohibited

21 “Punishment by flogging, or by branding, marking,
 22 or tattooing on the body, or any other cruel or unusual
 23 punishment, may not be adjudged by a military commis-

1 sion under this chapter or inflicted under this chapter
 2 upon any person subject to this chapter. The use of irons,
 3 single or double, except for the purpose of safe custody,
 4 is prohibited under this chapter.

5 **“§ 949t. Maximum limits**

6 “The punishment which a military commission under
 7 this chapter may direct for an offense may not exceed such
 8 limits as the President or Secretary of Defense may pre-
 9 scribe for that offense.

10 **“§ 949u. Execution of confinement**

11 “(a) IN GENERAL.—Under such regulations as the
 12 Secretary of Defense may prescribe, a sentence of confine-
 13 ment adjudged by a military commission under this chap-
 14 ter may be carried into execution by confinement—

15 “(1) in any place of confinement under the con-
 16 trol of any of the armed forces; or

17 “(2) in any penal or correctional institution
 18 under the control of the United States or its allies,
 19 or which the United States may be allowed to use.

20 “(b) TREATMENT DURING CONFINEMENT BY OTHER
 21 THAN THE ARMED FORCES.—Persons confined under
 22 subsection (a)(2) in a penal or correctional institution not
 23 under the control of an armed force are subject to the
 24 same discipline and treatment as persons confined or com-
 25 mitted by the courts of the United States or of the State,

1 District of Columbia, or place in which the institution is
 2 situated.

3 “SUBCHAPTER VI—POST-TRIAL PROCEDURE
 4 AND REVIEW OF MILITARY COMMISSIONS

“Sec.

“950a. Error of law; lesser included offense.

“950b. Review by the convening authority.

“950c. Waiver or withdrawal of appeal.

“950d. Appeal by the United States.

“950e. Rehearings.

“950f. Review by Court of Military Commission Review.

“950g. Review by the United States Court of Appeals for the District of Colum-
 bia Circuit and the Supreme Court.

“950h. Appellate counsel.

“950i. Execution of sentence; suspension of sentence.

“950j. Finality or proceedings, findings, and sentences.

5 **“§ 950a. Error of law; lesser included offense**

6 “(a) ERROR OF LAW.—A finding or sentence of a
 7 military commission under this chapter may not be held
 8 incorrect on the ground of an error of law unless the error
 9 materially prejudices the substantial rights of the accused.

10 “(b) LESSER INCLUDED OFFENSE.—Any reviewing
 11 authority with the power to approve or affirm a finding
 12 of guilty by a military commission under this chapter may
 13 approve or affirm, instead, so much of the finding as in-
 14 cludes a lesser included offense.

15 **“§ 950b. Review by the convening authority**

16 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-
 17 INGS AND SENTENCE.—The findings and sentence of a
 18 military commission under this chapter shall be reported

1 in writing promptly to the convening authority after the
2 announcement of the sentence.

3 “(b) SUBMITTAL OF MATTERS BY ACCUSED TO CON-
4 VENING AUTHORITY.—(1) The accused may submit to the
5 convening authority matters for consideration by the con-
6 vening authority with respect to the findings and the sen-
7 tence of the military commission under this chapter.

8 “(2)(A) Except as provided in subparagraph (B), a
9 submittal under paragraph (1) shall be made in writing
10 within 20 days after accused has been given an authenti-
11 cated record of trial under section 949o(c) of this title.

12 “(B) If the accused shows that additional time is re-
13 quired for the accused to make a submittal under para-
14 graph (1), the convening authority may, for good cause,
15 extend the applicable period under subparagraph (A) for
16 not more than an additional 20 days.

17 “(3) The accused may waive his right to make a sub-
18 mittal to the convening authority under paragraph (1).
19 Such a waiver shall be made in writing and may not be
20 revoked. For the purposes of subsection (c)(2), the time
21 within which the accused may make a submittal under this
22 subsection shall be deemed to have expired upon the sub-
23 mittal of a waiver under this paragraph to the convening
24 authority.

1 “(c) ACTION BY CONVENING AUTHORITY.—(1) The
2 authority under this subsection to modify the findings and
3 sentence of a military commission under this chapter is
4 a matter of the sole discretion and prerogative of the con-
5 vening authority.

6 “(2)(A) The convening authority shall take action on
7 the sentence of a military commission under this chapter.

8 “(B) Subject to regulations prescribed by the Sec-
9 retary of Defense, action on the sentence under this para-
10 graph may be taken only after consideration of any mat-
11 ters submitted by the accused under subsection (b) or
12 after the time for submitting such matters expires, which-
13 ever is earlier.

14 “(C) In taking action under this paragraph, the con-
15 vening authority may, in his sole discretion, approve, dis-
16 approve, commute, or suspend the sentence in whole or
17 in part. The convening authority may not increase a sen-
18 tence beyond that which is found by the military commis-
19 sion.

20 “(3) The convening authority is not required to take
21 action on the findings of a military commission under this
22 chapter. If the convening authority takes action on the
23 findings, the convening authority may, in his sole discre-
24 tion, may—

1 “(A) dismiss any charge or specification by set-
2 ting aside a finding of guilty thereto; or

3 “(B) change a finding of guilty to a charge to
4 a finding of guilty to an offense that is a lesser in-
5 cluded offense of the offense stated in the charge.

6 “(4) The convening authority shall serve on the ac-
7 cused or on defense counsel notice of any action taken by
8 the convening authority under this subsection.

9 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-
10 ject to paragraphs (2) and (3), the convening authority
11 of a military commission under this chapter may, in his
12 sole discretion, order a proceeding in revision or a rehear-
13 ing.

14 “(2)(A) Except as provided in subparagraph (B), a
15 proceeding in revision may be ordered by the convening
16 authority if—

17 “(i) there is an apparent error or omission in
18 the record; or

19 “(ii) the record shows improper or inconsistent
20 action by the military commission with respect to
21 the findings or sentence that can be rectified without
22 material prejudice to the substantial rights of the
23 accused.

24 “(B) In no case may a proceeding in revision—

8 “(iii) increase the severity of the sentence un-
9 less the sentence prescribed for the offense is man-
10 datory.

22 **“§ 950c. Appellate referral; waiver or withdrawal of**
23 **appeal**

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1 case in which the final decision of a military commission
2 (as approved by the convening authority) includes a find-
3 ing of guilty, the convening authority shall refer the case
4 to the Court of Military Commission Review. Any such re-
5 ferral shall be made in accordance with procedures pre-
6 scribed under regulations of the Secretary.

7 “(b) WAIVER OF RIGHT OF REVIEW.—(1) In each
8 case subject to appellate review under section 950f of this
9 title, except a case in which the sentence as approved
10 under section 950b of this title extends to death, the ac-
11 cused may file with the convening authority a statement
12 expressly waiving the right of the accused to such review.

13 “(2) A waiver under paragraph (1) shall be signed
14 by both the accused and a defense counsel.

15 “(3) A waiver under paragraph (1) must be filed, if
16 at all, within 10 days after notice on the action is served
17 on the accused or on defense counsel under section
18 950b(c)(4) of this title. The convening authority, for good
19 cause, may extend the period for such filing by not more
20 than 30 days.

21 “(c) WITHDRAWAL OF APPEAL.—Except in a case in
22 which the sentence as approved under section 950b of this
23 title extends to death, the accused may withdraw an ap-
24 peal at any time.

1 “(d) EFFECT OF WAIVER OR WITHDRAWAL.—A
2 waiver of the right to appellate review or the withdrawal
3 of an appeal under this section bars review under section
4 950f of this title.

5 **“§ 950d. Appeal by the United States**

6 “(a) INTERLOCUTORY APPEAL.—(1) Except as pro-
7 vided in paragraph (2), in a trial by military commission
8 under this chapter, the United States may take an inter-
9 locutory appeal to the Court of Military Commission Re-
10 view of any order or ruling of the military judge that—

11 “(A) terminates proceedings of the military
12 commission with respect to a charge or specification;

13 “(B) excludes evidence that is substantial proof
14 of a fact material in the proceeding; or

15 “(C) relates to a matter under subsection (d),
16 (e), or (f) of section 949d of this title.

17 “(2) The United States may not appeal under para-
18 graph (1) an order or ruling that is, or amounts to, a find-
19 ing of not guilty by the military commission with respect
20 to a charge or specification.

21 “(b) NOTICE OF APPEAL.—The United States shall
22 take an appeal of an order or ruling under subsection (a)
23 by filing a notice of appeal with the military judge within
24 five days after the date of such order or ruling.

1 “(c) APPEAL.—An appeal under this section shall be
2 forwarded, by means specified in regulations prescribed
3 the Secretary of Defense, directly to the Court of Military
4 Commission Review. In ruling on an appeal under this sec-
5 tion, the Court of Military Commission Review may act
6 only with respect to matters of law.

7 “(d) APPEAL FROM ADVERSE RULING.—The United
8 States may appeal an adverse ruling on an appeal under
9 subsection (c) to the United States Court of Appeals for
10 the District of Columbia Circuit by filing a petition for
11 review in the Court of Appeals within 10 days after the
12 date of such ruling. Review under this subsection shall be
13 at the discretion of the Court of Appeals.

14 **“§ 950e. Rehearings**

15 “(a) COMPOSITION OF MILITARY COMMISSION FOR
16 REHEARING.—Each rehearing under this chapter shall
17 take place before a military commission under this chapter
18 composed of members who were not members of the mili-
19 tary commission which first heard the case.

20 “(b) SCOPE OF REHEARING.—(1) Upon a rehear-
21 ing—

22 “(A) the accused may not be tried for any of-
23 fense of which he was found not guilty by the first
24 military commission; and

1 “(B) no sentence in excess of or more than the
2 original sentence may be imposed unless—

3 “(i) the sentence is based upon a finding
4 of guilty of an offense not considered upon the
5 merits in the original proceedings; or

6 “(ii) the sentence prescribed for the of-
7 fense is mandatory.

8 “(2) Upon a rehearing, if the sentence approved after
9 the first military commission was in accordance with a
10 pretrial agreement and the accused at the rehearing
11 changes his plea with respect to the charges or specifica-
12 tions upon which the pretrial agreement was based, or oth-
13 erwise does not comply with pretrial agreement, the sen-
14 tence as to those charges or specifications may include any
15 punishment not in excess of that lawfully adjudged at the
16 first military commission.

17 **“§ 950f. Review by Court of Military Commission Re-**
18 **view**

19 “(a) ESTABLISHMENT.—The Secretary of Defense
20 shall establish a Court of Military Commission Review
21 which shall be composed of one or more panels, and each
22 such panel shall be composed of not less than three appel-
23 late military judges. For the purpose of reviewing military
24 commission decisions under this chapter, the court may

1 sit in panels or as a whole in accordance with rules pre-
 2 scribed by the Secretary.

3 “(b) APPELLATE MILITARY JUDGES.—The Secretary
 4 shall assign appellate military judges to a Court of Mili-
 5 tary Commission Review. Each appellate military judge
 6 shall meet the qualifications for military judges prescribed
 7 by section 948j(b) of this title or shall be a civilian with
 8 comparable qualifications. No person may be appointed to
 9 serve as an appellate military judge in any case in which
 10 that person acted as a military judge, counsel, or review-
 11 ing official.

12 “(c) CASES TO BE REVIEWED.—The Court of Mili-
 13 tary Commission Review, in accordance with procedures
 14 prescribed under regulations of the Secretary, shall review
 15 the record in each case that is referred to the Court by
 16 the convening authority under section 950c of this title
 17 with respect to any matter of law raised by the accused.

18 “(d) SCOPE OF REVIEW.—In a case reviewed by it
 19 under this section, the Court of Military Commission Re-
 20 view may act only with respect to matters of law.

21 **“§ 950g. Review by the United States Court of Ap-**
 22 **peals for the District of Columbia Circuit**
 23 **and the Supreme Court**

24 “(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A)
 25 Except as provided in subparagraph (B), the United

1 States Court of Appeals for the District of Columbia Cir-
2 cuit shall have exclusive jurisdiction to determine the va-
3 lidity of a final judgment rendered by a military commis-
4 sion (as approved by the convening authority) under this
5 chapter.

6 “(B) The Court of Appeals may not review the final
7 judgment until all other appeals under this chapter have
8 been waived or exhausted.

9 “(2) A petition for review must be filed by the ac-
10 cused in the Court of Appeals not later than 20 days after
11 the date on which—

12 “(A) written notice of the final decision of the
13 Court of Military Commission Review is served on
14 the accused or on defense counsel; or

15 “(B) the accused submits, in the form pre-
16 scribed by section 950c of this title, a written notice
17 waiving the right of the accused to review by the
18 Court of Military Commission Review under section
19 950f of this title.

20 “(b) STANDARD FOR REVIEW.—In a case reviewed
21 by it under this section, the Court of Appeals may act
22 only with respect to matters of law.

23 “(c) SCOPE OF REVIEW.—The jurisdiction of the
24 Court of Appeals on an appeal under subsection (a) shall
25 be limited to the consideration of—

1 “(1) whether the final decision was consistent
2 with the standards and procedures specified in this
3 chapter; and

4 “(2) to the extent applicable, the Constitution.

5 “(d) SUPREME COURT.—The Supreme Court may re-
6 view by writ of certiorari the final judgment of the Court
7 of Appeals pursuant to section 1257 of title 28.

8 **“§ 950h. Appellate counsel**

9 “(a) APPOINTMENT.—The Secretary of Defense
10 shall, by regulation, establish procedures for the appoint-
11 ment of appellate counsel for the United States and for
12 the accused in military commissions under this chapter.
13 Appellate counsel shall meet the qualifications for counsel
14 appearing before military commissions under this chapter.

15 “(b) REPRESENTATION OF UNITED STATES.—Appel-
16 late counsel appointed under subsection (a)—

17 “(1) shall represent the United States in any
18 appeal or review proceeding under this chapter be-
19 fore the Court of Military Commission Review; and

20 “(2) may, when requested to do so by the At-
21 torney General in a case arising under this chapter,
22 represent the United States before the United States
23 Court of Appeals for the District of Columbia Cir-
24 cuit or the Supreme Court.

1 “(c) REPRESENTATION OF ACCUSED.—The accused
 2 shall be represented by appellate counsel appointed under
 3 subsection (a) before the Court of Military Commission
 4 Review, the United States Court of Appeals for the Dis-
 5 trict of Columbia Circuit, and the Supreme Court, and by
 6 civilian counsel if retained by the accused. Any such civil-
 7 ian counsel shall meet the qualifications under paragraph
 8 (3) of section 949c(b) of this title for civilian counsel ap-
 9 pearing before military commissions under this chapter
 10 and shall be subject to the requirements of paragraph (4)
 11 of that section. The provisions of subparagraph (D) of sec-
 12 tion 949d(e)(5) of this title shall apply with respect to ap-
 13 pellate counsel.

14 **“§ 950i. Execution of sentence; suspension of sentence**

15 “(a) EXECUTION OF SENTENCE OF DEATH ONLY
 16 UPON APPROVAL BY THE PRESIDENT.—If the sentence
 17 of a military commission under this chapter extends to
 18 death, that part of the sentence providing for death may
 19 not be executed until approved by the President. In such
 20 a case, the President may commute, remit, or suspend the
 21 sentence, or any part thereof, as he sees fit.

22 “(b) EXECUTION OF SENTENCE OF DEATH ONLY
 23 UPON FINAL JUDGMENT OF LEGALITY OF PRO-
 24 CEEDINGS.—(1) If the sentence of a military commission
 25 under this chapter extends to death, the sentence may not

1 be executed until there is a final judgement as to the legal-
2 ity of the proceedings (and with respect to death, approval
3 under subsection (a)).

4 “(2) A judgement as to legality of proceedings is final
5 for purposes of paragraph (1) when—

6 “(A) the time for the accused to file a petition
7 for review by the Court of Appeals for the District
8 of Columbia Circuit has expired and the accused has
9 not filed a timely petition for such review and the
10 case is not otherwise under review by that Court; or

11 “(B) review is completed in accordance with the
12 judgment of the United States Court of Appeals for
13 the District of Columbia Circuit and—

14 “(i) a petition for a writ of certiorari is not
15 timely filed;

16 “(ii) such a petition is denied by the Su-
17 preme Court; or

18 “(iii) review is otherwise completed in ac-
19 cordance with the judgment of the Supreme
20 Court.

21 “(c) SUSPENSION OF SENTENCE.—The Secretary of
22 the Defense, or the convening authority acting on the case
23 (if other than the Secretary), may suspend the execution
24 of any sentence or part thereof in the case, except a sen-
25 tence of death.

1 **“§ 950j. Finality or proceedings, findings, and sen-**
 2 **tences**

3 “(a) FINALITY.—The appellate review of records of
 4 trial provided by this chapter, and the proceedings, find-
 5 ings, and sentences of military commissions as approved,
 6 reviewed, or affirmed as required by this chapter, are final
 7 and conclusive. Orders publishing the proceedings of mili-
 8 tary commissions under this chapter are binding upon all
 9 departments, courts, agencies, and officers of the United
 10 States, except as otherwise provided by the President.

11 “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-
 12 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-
 13 TIONS.—Except as otherwise provided in this chapter and
 14 notwithstanding any other provision of law (including sec-
 15 tion 2241 of title 28 or any other habeas corpus provi-
 16 sion), no court, justice, or judge shall have jurisdiction to
 17 hear or consider any claim or cause of action whatsoever,
 18 including any action pending on or filed after the date of
 19 the enactment of the Military Commissions Act of 2006,
 20 relating to the prosecution, trial, or judgment of a military
 21 commission under this chapter, including challenges to the
 22 lawfulness of procedures of military commissions under
 23 this chapter.

24 **“SUBCHAPTER VII—PUNITIVE MATTERS**

“Sec.

“950p. Statement of substantive offenses.

“950q. Principals.

“950r. Accessory after the fact.

“950s. Conviction of lesser included offense.

“950t. Attempts.

“950u. Solicitation.

“950v. Crimes triable by military commissions.

“950w. Perjury and obstruction of justice.

“950x. Contempt.

1 **“§ 950p. Statement of substantive offenses**

2 “(a) PURPOSE.—The provisions of this subchapter
3 codify offenses that have traditionally been triable by mili-
4 tary commissions. This chapter does not establish new
5 crimes that did not exist before its enactment, but rather
6 codifies those crimes for trial by military commission.

7 “(b) EFFECT.—Because the provisions of this sub-
8 chapter (including provisions that incorporate definitions
9 in other provisions of law) are declarative of existing law,
10 they do not preclude trial for crimes that occurred before
11 the date of the enactment of this chapter.

12 **“§ 950q. Principals**

13 “Any person is punishable as a principal under this
14 chapter who—

15 “(1) commits an offense punishable by this
16 chapter, or aids, abets, counsels, commands, or pro-
17 cures its commission;

18 “(2) causes an act to be done which if directly
19 performed by him would be punishable by this chap-
20 ter; or

21 “(3) is a superior commander who, with regard
22 to acts punishable under this chapter, knew, had

1 reason to know, or should have known, that a subor-
 2 dinate was about to commit such acts or had done
 3 so and the superior failed to take the necessary and
 4 reasonable measures to prevent such acts or to pun-
 5 ish the perpetrators thereof.

6 **“§ 950r. Accessory after the fact**

7 “Any person subject to this chapter who, knowing
 8 that an offense punishable by this chapter has been com-
 9 mitted, receives, comforts, or assists the offender in order
 10 to hinder or prevent his apprehension, trial, or punishment
 11 shall be punished as a military commission under this
 12 chapter may direct.

13 **“§ 950s. Conviction of lesser included offense**

14 “An accused may be found guilty of an offense nec-
 15 essarily included in the offense charged or of an attempt
 16 to commit either the offense charged or an attempt to
 17 commit either the offense charged or an offense nec-
 18 essarily included therein.

19 **“§ 950t. Attempts**

20 “(a) IN GENERAL.—Any person subject to this chap-
 21 ter who attempts to commit any offense punishable by this
 22 chapter shall be punished as a military commission under
 23 this chapter may direct.

24 “(b) SCOPE OF OFFENSE.—An act, done with spe-
 25 cific intent to commit an offense under this chapter,

1 amounting to more than mere preparation and tending,
2 even though failing, to effect its commission, is an attempt
3 to commit that offense.

4 “(c) EFFECT OF CONSUMMATION.—Any person sub-
5 ject to this chapter may be convicted of an attempt to com-
6 mit an offense although it appears on the trial that the
7 offense was consummated.

8 **“§ 950u. Solicitation**

9 “Any person subject to this chapter who solicits or
10 advises another or others to commit one or more sub-
11 stantive offenses triable by military commission under this
12 chapter shall, if the offense solicited or advised is at-
13 tempted or committed, be punished with the punishment
14 provided for the commission of the offense, but, if the of-
15 fense solicited or advised is not committed or attempted,
16 he shall be punished as a military commission under this
17 chapter may direct.

18 **“§ 950v. Crimes triable by military commissions**

19 “(a) DEFINITIONS AND CONSTRUCTION.—In this sec-
20 tion:

21 “(1) MILITARY OBJECTIVE.—The term ‘military
22 objective’ refers to—

23 “(A) combatants; and

24 “(B) those objects during an armed con-
25 flict—

1 “(i) which, by their nature, location,
2 purpose, or use, effectively contribute to
3 the opposing force’s war-fighting or war-
4 sustaining capability; and

5 “(ii) the total or partial destruction,
6 capture, or neutralization of which would
7 constitute a definite military advantage to
8 the attacker under the circumstances at
9 the time of the attack.

10 “(2) PROTECTED PERSON.—The term ‘pro-
11 tected person’ refers to any person entitled to pro-
12 tection under one or more of the Geneva Conven-
13 tions, including—

14 “(A) civilians not taking an active part in
15 hostilities;

16 “(B) military personnel placed hors de
17 combat by sickness, wounds, or detention; and

18 “(C) military medical or religious per-
19 sonnel.

20 “(3) PROTECTED PROPERTY.—The term ‘pro-
21 tected property’ refers to property specifically pro-
22 tected by the law of war (such as buildings dedicated
23 to religion, education, art, science or charitable pur-
24 poses, historic monuments, hospitals, or places
25 where the sick and wounded are collected), if such

1 property is not being used for military purposes or
2 is not otherwise a military objective. Such term in-
3 cludes objects properly identified by one of the dis-
4 tinctive emblems of the Geneva Conventions.

5 “(4) CONSTRUCTION.—The intent specified for
6 an offense under paragraph (1), (2), (3), (4), or
7 (12) of subsection (b) precludes the applicability of
8 such offense with regard to—

9 “(A) collateral damage; or

10 “(B) death, damage, or injury incident to
11 a lawful attack.

12 “(b) OFFENSES.—The following offenses shall be tri-
13 able by military commission under this chapter at any
14 time without limitation:

15 “(1) MURDER OF PROTECTED PERSONS.—An
16 alien unlawful enemy combatant who intentionally
17 kills one or more protected persons is guilty of the
18 offense of intentionally killing a protected person
19 and shall be subject to whatever punishment a com-
20 mission may direct, including the penalty of death.

21 “(2) ATTACKING CIVILIANS.—An alien unlawful
22 enemy combatant who intentionally engages in an
23 attack upon a civilian population as such or indi-
24 vidual civilians not taking active part in hostilities is
25 guilty of the offense of attacking civilians and shall

1 be subject to whatever punishment a commission
2 may direct, including, if death results to one or more
3 of the victims, the penalty of death.

4 “(3) ATTACKING CIVILIAN OBJECTS.—An alien
5 unlawful enemy combatant who intentionally en-
6 gages in an attack upon property that is not a mili-
7 tary objective shall be guilty of the offense of attack-
8 ing civilian objects and shall be subject to whatever
9 punishment a commission may direct.

10 “(4) ATTACKING PROTECTED PROPERTY.—An
11 alien unlawful enemy combatant who intentionally
12 engages in an attack upon protected property shall
13 be guilty of the offense of attacking protected prop-
14 erty and shall be subject to whatever punishment a
15 commission may direct.

16 “(5) PILLAGING.—An alien unlawful enemy
17 combatant who intentionally and in the absence of
18 military necessity appropriates or seizes property for
19 private or personal use, without the consent of a
20 person with authority to permit such appropriation
21 or seizure, shall be guilty of the offense of pillaging
22 and shall be subject to whatever punishment a com-
23 mission may direct.

24 “(6) DENYING QUARTER.—An alien unlawful
25 enemy combatant who, with effective command or

1 control over subordinate groups, declares, orders, or
2 otherwise indicates to those forces that there shall
3 be no survivors or surrender accepted, with the in-
4 tent therefore to threaten an adversary or to conduct
5 hostilities such that there would be no survivors or
6 surrender accepted, shall be guilty of denying quar-
7 ter and shall be subject to whatever punishment a
8 commission may direct.

9 “(7) TAKING HOSTAGES.—An alien unlawful
10 enemy combatant who, having knowingly seized or
11 detained one or more persons, threatens to kill, in-
12 jure, or continue to detain such person or persons
13 with the intent of compelling any nation, person
14 other than the hostage, or group of persons to act
15 or refrain from acting as an explicit or implicit con-
16 dition for the safety or release of such person or per-
17 sons, shall be guilty of the offense of taking hostages
18 and shall be subject to whatever punishment a com-
19 mission may direct, including, if death results to one
20 or more of the victims, the penalty of death.

21 “(8) EMPLOYING POISON OR ANALOGOUS WEAP-
22 ONS.—An alien unlawful enemy combatant who in-
23 tentiously, as a method of warfare, employs a sub-
24 stance or a weapon that releases a substance that
25 causes death or serious and lasting damage to health

1 in the ordinary course of events, through its asphyx-
2 iating, bacteriological, or toxic properties, shall be
3 guilty of employing poison or analogous weapons and
4 shall be subject to whatever punishment a commis-
5 sion may direct, including, if death results to one or
6 more of the victims, the penalty of death.

7 “(9) USING PROTECTED PERSONS AS
8 SHIELDS.—An alien unlawful enemy combatant who
9 positions, or otherwise takes advantage of, a pro-
10 tected person with the intent to shield a military ob-
11 jective from attack or to shield, favor, or impede
12 military operations, shall be guilty of the offense of
13 using protected persons as shields and shall be sub-
14 ject to whatever punishment a commission may di-
15 rect, including, if death results to one or more of the
16 victims, the penalty of death.

17 “(10) USING PROTECTED PROPERTY AS
18 SHIELDS.—An alien unlawful enemy combatant who
19 positions, or otherwise takes advantage of the loca-
20 tion of, protected property under the law of war with
21 the intent to shield a military objective from attack
22 or to shield, favor, or impede military operations,
23 shall be guilty of the offense of using protected prop-
24 erty as shields and shall be subject to whatever pun-
25 ishment a commission may direct.

1 “(11) TORTURE.—An alien unlawful enemy
2 combatant who commits an act specifically intended
3 to inflict severe physical pain or suffering or severe
4 mental pain or suffering (other than pain or suf-
5 fering incidental to lawful sanctions) upon another
6 person within his custody or physical control for the
7 purpose of obtaining information or a confession,
8 punishment, intimidation, coercion, or any reason
9 based on discrimination of any kind, shall be guilty
10 of torture and subject to whatever punishment a
11 commission may direct, including, if death results to
12 one or more of the victims, the penalty of death. In
13 this paragraph, the term ‘severe mental pain or suf-
14 fering’ has the meaning given that term in section
15 2340(2) of title 18.

16 “(12) CRUEL OR INHUMAN TREATMENT.—An
17 alien unlawful enemy combatant who commits an act
18 intended to inflict severe physical pain or suffering
19 or severe mental pain or suffering (other than pain
20 or suffering incidental to lawful sanctions), including
21 severe physical abuse, upon another person within
22 his custody or physical control shall be guilty of
23 cruel or inhuman treatment and subject to whatever
24 punishment a commission may direct, including, if
25 death results to one or more of the victims, the pen-

1 alty of death. In this paragraph, the term ‘severe
2 mental pain or suffering’ has the meaning given that
3 term in section 2340(2) of title 18.

4 “(13) INTENTIONALLY CAUSING SERIOUS BOD-
5 ILY INJURY.—An alien unlawful enemy combatant
6 who intentionally causes serious bodily injury to one
7 or more persons, including lawful combatants, in vio-
8 lation of the law of war shall be guilty of the offense
9 of causing serious bodily injury and shall be subject
10 to whatever punishment a commission may direct,
11 including, if death results to one or more of the vic-
12 tims, the penalty of death. In this paragraph, the
13 term ‘serious bodily injury’ has the meaning given
14 that term in section 113(b)(2) of title 18.

15 “(14) MUTILATING OR MAIMING.—An alien un-
16 lawful enemy combatant who intentionally injures
17 one or more protected persons, by disfiguring the
18 person or persons by any mutilation thereof or by
19 permanently disabling any member, limb, or organ
20 of his body, without any legitimate medical or dental
21 purpose, shall be guilty of the offense of mutilation
22 or maiming and shall be subject to whatever punish-
23 ment a commission may direct, including, if death
24 results to one or more of the victims, the penalty of
25 death.

1 “(15) MURDER IN VIOLATION OF THE LAW OF
2 WAR.—An alien unlawful enemy combatant who in-
3 tentionally kills one or more persons, including law-
4 ful combatants, in violation of the law of war shall
5 be guilty of the offense of murder in violation of the
6 law of war and shall be subject to whatever punish-
7 ment a commission may direct, including the penalty
8 of death.

9 “(16) DESTRUCTION OF PROPERTY IN VIOLA-
10 TION OF THE LAW OF WAR.—An alien unlawful
11 enemy combatant who intentionally destroys prop-
12 erty belonging to another person in violation of the
13 law of war shall be guilty of the offense of destruc-
14 tion of property in violation of the law of war and
15 shall be subject to whatever punishment a commis-
16 sion may direct.

17 “(17) USING TREACHERY OR PERFIDY.—An
18 alien unlawful enemy combatant who, after inviting
19 the confidence or belief of one or more persons that
20 they were entitled to, or obliged to accord, protection
21 under the law of war, intentionally makes use of
22 that confidence or belief in killing, injuring, or cap-
23 turing such person or persons, shall be guilty of
24 using treachery or perfidy and shall be subject to
25 whatever punishment a commission may direct.

1 “(18) IMPROPERLY USING A FLAG OF TRUCE.—

2 An alien unlawful enemy combatant who uses a flag
3 of truce to feign an intention to negotiate, sur-
4 render, or otherwise to suspend hostilities when
5 there is no such intention, shall be guilty of improv-
6 erly using a flag of truce and shall be subject to
7 whatever punishment a commission may direct.

8 “(19) IMPROPERLY USING A DISTINCTIVE EM-

9 BLEM.—An alien unlawful enemy combatant who in-
10 tentionally uses a distinctive emblem recognized by
11 the law of war for combatant purposes in a manner
12 prohibited by the law of war shall be guilty of im-
13 properly using a distinctive emblem and shall be
14 subject to whatever punishment a commission may
15 direct.

16 “(20) INTENTIONALLY MISTREATING A DEAD

17 BODY.—An alien unlawful enemy combatant who in-
18 tentionally mistreats the body of a dead person,
19 without justification by legitimate military necessary,
20 shall be guilty of the offense of mistreating a dead
21 body and shall be subject to whatever punishment a
22 commission may direct.

23 “(21) RAPE.—An alien unlawful enemy combat-

24 ant who forcibly or with coercion or threat of force
25 wrongfully invades the body of a person by pene-

1 trating, however slightly, the anal or genital opening
2 of the victim with any part of the body of the ac-
3 cused or with any foreign object shall be guilty of
4 the offense of rape and shall be subject to whatever
5 punishment a commission may direct.

6 “(22) HIJACKING OR HAZARDING A VESSEL OR
7 AIRCRAFT.—An alien unlawful enemy combatant
8 subject to this title who intentionally seizes, exer-
9 cises unauthorized control over, or endangers the
10 safe navigation of, a vessel or aircraft that was not
11 a legitimate military target is guilty of the offense
12 of hijacking or hazarding a vessel or aircraft and
13 shall be subject to whatever punishment a commis-
14 sion may direct, including, if death results to one or
15 more of the victims, the penalty of death.

16 “(23) TERRORISM.—An alien unlawful enemy
17 combatant subject to this title who intentionally kills
18 or inflicts great bodily harm on one or more persons,
19 or intentionally engages in an act that evinces a
20 wanton disregard for human life, in a manner cal-
21 culated to influence or affect the conduct of govern-
22 ment or civilian population by intimidation or coer-
23 cion, or to retaliate against government conduct,
24 shall be guilty of the offense of terrorism and shall
25 be subject to whatever punishment a commission

1 may direct, including, if death results to one or more
2 of the victims, the penalty of death.

3 “(24) PROVIDING MATERIAL SUPPORT FOR
4 TERRORISM.—An alien unlawful enemy combatant
5 who provides material support or resources, knowing
6 or intending that they are to be used in preparation
7 for, or in carrying out, an act of terrorism (as de-
8 fined in paragraph (23)), or who intentionally pro-
9 vides material support or resources to an inter-
10 national terrorist organization engaged in hostilities
11 against the United States, knowing that such orga-
12 nization has engaged or engages in terrorism (as de-
13 fined in paragraph (23)), shall be guilty of the of-
14 fense of providing material support for terrorism
15 and shall be subject to whatever punishment a com-
16 mission may direct. In this paragraph, the term ‘ma-
17 terial support or resources’ has the meaning given
18 that term in section 2339A(b) of title 18.

19 “(25) WRONGFULLY AIDING THE ENEMY.—An
20 alien unlawful enemy combatant who, in breach of
21 an allegiance or duty to the United States, know-
22 ingly and intentionally aids an enemy of the United
23 States or one its co-belligerents shall be guilty of the
24 offense of wrongfully aiding the enemy and shall be

1 subject to whatever punishment a commission may
2 direct.

3 “(26) SPYING.—An alien unlawful enemy com-
4 batant who, with intent or reason to believe that it
5 is to be used to the injury of the United States or
6 to the advantage of a foreign power, collects or at-
7 tempts to collect certain information by clandestine
8 means or while acting under false pretenses, for the
9 purpose of conveying such information to an enemy
10 of the United States or one of its co-belligerents,
11 shall be guilty of the offense of spying and shall be
12 subject to whatever punishment a commission may
13 direct, including the penalty of death.

14 “(27) CONSPIRACY.—An alien unlawful enemy
15 combatant who conspires to commit one or more
16 substantive offenses triable under this section, and
17 who knowingly does any overt act to effect the object
18 of the conspiracy, shall be guilty of conspiracy and
19 shall be subject to whatever punishment a commis-
20 sion may direct, including, if death results to one or
21 more of the victims, the penalty of death.

22 **“§ 950w. Perjury and obstruction of justice**

23 “A military commission under this chapter may try
24 offenses and impose punishments for perjury, false testi-

1 mony, or obstruction of justice related to military commis-
 2 sions under this chapter.

3 **“§ 950x. Contempt**

4 “A military commission under this chapter may pun-
 5 ish for contempt any person who uses any menacing word,
 6 sign, or gesture in its presence, or who disturbs its pro-
 7 ceedings by any riot or disorder.”.

8 (2) TABLES OF CHAPTERS AMENDMENTS.—The
 9 tables of chapters at the beginning of subtitle A, and
 10 at the beginning of part II of subtitle A, of title 10,
 11 United States Code, are each amended by inserting
 12 after the item relating to chapter 47 the following
 13 new item:

“47A. Military Commissions 948a.”.

14 (b) CONFORMING AMENDMENT TO UCMJ.—Section
 15 836(a) of title 10, United States Code (article 36(a) of
 16 the Uniform Code of Military Justice)), is amended by in-
 17 serting “, except as provided in chapter 47A of this title,”
 18 after “but which may not”.

19 (c) SUBMITTAL OF PROCEDURES TO CONGRESS.—
 20 Not later than 90 days after the date of the enactment
 21 of this Act, the Secretary of Defense shall submit to the
 22 Committees on Armed Services of the Senate and the
 23 House of Representatives a report setting forth the proce-
 24 dures for military commissions prescribed under chapter

1 47A of title 10, United States Code (as added by sub-
2 section (a)).

3 **SEC. 4. CLARIFICATION OF CONDUCT CONSTITUTING WAR**
4 **CRIME OFFENSE UNDER FEDERAL CRIMINAL**
5 **CODE.**

6 (a) APPLICABILITY ONLY TO SERIOUS VIOLATIONS
7 OF COMMON ARTICLE 3.—Section 2441 of title 18, United
8 States Code is amended—

9 (1) by striking paragraph (3) of subsection (c)
10 and inserting the following:

11 “(3) which constitutes a serious violation of
12 common Article 3 of the 1949 Geneva Conventions,
13 when committed in the context of and in association
14 with an armed conflict not of an international char-
15 acter; or”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(d) COVERED COMMON ARTICLE 3 VIOLATIONS.—

19 “(1) SERIOUS VIOLATIONS.—In subsection
20 (c)(3), the term ‘serious violation of common Article
21 3 of the 1949 Geneva Conventions’ means any of the
22 following:

23 “(A) TORTURE.—The act of a person who
24 commits, or conspires or attempts to commit,
25 an act specifically intended to inflict severe

1 physical pain or suffering or severe mental pain
2 or suffering (as such term is defined in section
3 2340(2) of this title), other than pain or suf-
4 fering incidental to lawful sanctions, upon an-
5 other person within his custody or physical con-
6 trol for the purpose of obtaining information or
7 a confession, punishment, intimidation, coer-
8 cion, or any reason based on discrimination of
9 any kind.

10 “(B) CRUEL OR INHUMAN TREATMENT.—

11 The act of a person who commits, or conspires
12 or attempts to commit, an act intended to in-
13 flict severe physical pain or suffering or severe
14 mental pain or suffering (as such term is de-
15 fined in section 2340(2) of this title), other
16 than pain or suffering incidental to lawful sanc-
17 tions, and including severe physical abuse, upon
18 another person within his custody or physical
19 control.

20 “(C) PERFORMING BIOLOGICAL EXPERI-

21 MENTS.—The act of a person who subjects, or
22 conspires or attempts to subject, one or more
23 persons within his custody or physical control to
24 biological experiments and in so doing endan-

1 gers the body or health of such person or per-
2 sons.

3 “(D) MURDER.—The act of a person who
4 intentionally kills, or conspires or attempts to
5 kill, or kills whether intentionally or uninten-
6 tionally in the course of committing any other
7 offense under this section, one or more persons
8 taking no active part in the hostilities, including
9 those placed hors de combat by sickness,
10 wounds, detention, or any other cause.

11 “(E) MUTILATION OR MAIMING.—The act
12 of a person who intentionally injures, or con-
13 spires or attempts to injure, or injures whether
14 intentionally or unintentionally in the course of
15 committing any other offense under this sec-
16 tion, one or more persons taking no active part
17 in the hostilities, including those placed hors de
18 combat by sickness, wounds, detention, or any
19 other cause, by disfiguring the person or per-
20 sons by any mutilation thereof or by perma-
21 nently disabling any member, limb, or organ of
22 his body, without any legitimate medical or den-
23 tal purpose.

24 “(F) INTENTIONALLY CAUSING GREAT
25 SUFFERING OR SERIOUS INJURY.—The act of a

1 person who intentionally causes, or conspires or
2 attempts to cause, serious bodily injury (as
3 such term is defined in section 113(b)(2) of this
4 title) to one or more persons taking no active
5 part in the hostilities, including those placed
6 hors de combat by sickness, wounds, detention,
7 or any other cause.

8 “(G) RAPE.—The act of a person who
9 forcibly or with coercion or threat of force
10 wrongfully invades, or conspires or attempts to
11 invade, the body of a person by penetrating,
12 however slightly, the anal or genital opening of
13 the victim with any part of the body of the ac-
14 cused or with any foreign object.

15 “(H) SEXUAL ASSAULT OR ABUSE.—The
16 act of a person who forcibly or with coercion or
17 threat of force engages, or conspires or at-
18 tempts to engage, in sexual contact (as such
19 term is defined in section 2246(3) of this title)
20 with one or more persons, or causes, or con-
21 spires or attempts to cause, one or more per-
22 sons to engage in sexual contact (as so defined).

23 “(I) TAKING HOSTAGES.—The act of a
24 person who—

1 “(i) having knowingly seized or de-
2 tained one or more persons, threatens to
3 kill, injure, or continue to detain such per-
4 son or persons with the intent of compel-
5 ling any nation, person other than the hos-
6 tage, or group of persons to act or refrain
7 from acting as an explicit or implicit condi-
8 tion for the safety or release of such per-
9 son or persons; or

10 “(ii) attempts to engage or conspires
11 to engage in conduct under clause (i).

12 “(2) INAPPLICABILITY OF SPECIFIED PROVI-
13 SIONS WITH RESPECT TO CERTAIN CONDUCT.—The
14 intent specified for the conduct stated in subpara-
15 graphs (D), (E), and (F) of paragraph (1) precludes
16 the applicability of those subparagraphs with regard
17 to—

18 “(A) collateral damage; or

19 “(B) death, damage, or injury incident to
20 a lawful attack.”.

21 (b) RETROACTIVE APPLICABILITY.—The amend-
22 ments made by this section shall take effect as of Novem-
23 ber 26, 1997, as if enacted immediately after the amend-
24 ments made by section 583 of Public Law 105–118 (as
25 amended by section 4002 of Public Law 107–273).

1 **SEC. 5. JUDICIAL REVIEW.**

2 Section 2241 of title 28, United States Code, is
3 amended by striking both the subsection (e) added by sec-
4 tion 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)
5 and the subsection (e) added by section 1405(e)(1) of
6 Public Law 109–163 (119 Stat. 3477) and inserting the
7 following new subsection (e):

8 “(e)(1) Except as provided for in this subsection, and
9 notwithstanding any other law, no court, justice, or judge
10 shall have jurisdiction to hear or consider any claim or
11 cause of action, including an application for a writ of ha-
12 beas corpus, pending on or filed after the date of the en-
13 actment of the Military Commissions Act of 2006, against
14 the United States or its agents, brought by or on behalf
15 of any alien detained by the United States as an unlawful
16 enemy combatant, relating to any aspect of the alien’s de-
17 tention, transfer, treatment, or conditions of confinement.

18 “(2) The United States Court of Appeals for the Dis-
19 trict of Columbia Circuit shall have exclusive jurisdiction
20 to determine the validity of any final decision of a Combat-
21 ant Status Review Tribunal. The scope of such review is
22 defined in section 1005(e)(2) of the Detainee Treatment
23 Act of 2005. If the Court grants a detainee’s petition for
24 review, the Secretary of Defense may conduct a new Com-
25 batant Status Review Tribunal.

1 “(3) Review shall be had only of final judgments of
2 military commissions as provided for pursuant to section
3 950g of title 10, United States Code.

4 “(4) The court may consider classified information
5 submitted in camera and ex parte in making any deter-
6 mination under this section.”.

7 **SEC. 6. SATISFACTION OF TREATY OBLIGATIONS.**

8 (a) IN GENERAL.—Satisfaction of the prohibitions
9 against cruel, inhuman, and degrading treatment set forth
10 in section 1003 of the Detainee Treatment Act of 2005
11 (42 U.S.C. 2000dd) shall fully satisfy United States obli-
12 gations with respect to the standards for detention and
13 treatment established by section 1 of Common Article 3
14 of the Geneva Conventions, with the exception of the obli-
15 gations imposed by subsections 1(b) and 1(d) of such Arti-
16 cle .

17 (b) RIGHTS NOT JUDICIALLY ENFORCEABLE.—

18 (1) IN GENERAL.—No person in any habeas ac-
19 tion or any other action may invoke the Geneva Con-
20 ventions or any protocols thereto as a source of
21 rights, whether directly or indirectly, for any pur-
22 pose in any court of the United States or its States
23 or territories.

1 (2) CONSTRUCTION.—Paragraph (1) may not
 2 be construed to affect the obligations of the United
 3 States under the Geneva Conventions.

4 (c) GENEVA CONVENTIONS DEFINED.—In this sec-
 5 tion, the term “Geneva Conventions” means the inter-
 6 national conventions signed at Geneva on August 12,
 7 1949, including common Article 3.

8 **SEC. 7. REVISIONS TO DETAINEE TREATMENT ACT OF 2005**
 9 **RELATING TO PROTECTION OF CERTAIN**
 10 **UNITED STATES GOVERNMENT PERSONNEL.**

11 (a) COUNSEL AND INVESTIGATIONS.—Section
 12 1004(b) of the Detainee Treatment Act of 2005 (42
 13 U.S.C. 2000dd–1(b)) is amended—

14 (1) by striking “may provide” and inserting
 15 “shall provide”;

16 (2) by inserting “or investigation” after “crimi-
 17 nal prosecution”; and

18 (3) by inserting “whether before United States
 19 courts or agencies, foreign courts or agencies, or
 20 international courts or agencies,” after “described in
 21 that subsection”.

22 (b) PROTECTION OF PERSONNEL.—Section 1004 of
 23 the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–
 24 1) shall apply with respect to any criminal prosecution
 25 that—

1 (1) relates to the detention and interrogation of
 2 aliens described in such section;

3 (2) is grounded in section 2441(c)(3) of title
 4 18, United States Code; and

5 (3) relates to actions occurring between Sep-
 6 tember 11, 2001, and December 30, 2005.

7 **SEC. 8. RETROACTIVE APPLICABILITY.**

8 This Act shall take effect on the date of the enact-
 9 ment of this Act and shall apply retroactively, including—

10 (1) to any aspect of the detention, treatment, or
 11 trial of any person detained at any time since Sep-
 12 tember 11, 2001; and

13 (2) to any claim or cause of action pending on
 14 or after the date of the enactment of this Act.

15 **SEC. 9. AMENDMENTS TO UNIFORM CODE OF MILITARY**
 16 **JUSTICE.**

17 (a) *APPLICABILITY TO LAWFUL ENEMY COMBAT-*
 18 *ANTS.—Section 802(a) of title 10, United States Code (arti-*
 19 *cle 2(a) of the Uniform Code of Military Justice), is amend-*
 20 *ed by adding at the end the following new paragraph:*

21 “(13) *Lawful enemy combatants who violate the*
 22 *law of war.*”.

23 (b) *EXCLUSION OF CHAPTER 47A COMMISSIONS.—Sec-*
 24 *tion 821 of such title (article 21 of such Code) is amended*
 25 *by adding at the end the following new sentence: “This sec-*

1 *tion does not apply to military commissions established*
2 *under chapter 47A of this title.”.*

3 (c) *INAPPLICABILITY OF REQUIREMENT FOR UNIFORM*
4 *REGULATIONS.—Section 36(b) of such title (article (36) of*
5 *such Code) is amended by inserting before the period at the*
6 *end “, except insofar as applicable to military commissions*
7 *established under chapter 47A of this title”.*

Union Calendar No. 409

109TH CONGRESS
2^D Session

H. R. 6054

[Report No. 109-664, Parts I and II]

A BILL

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

SEPTEMBER 25, 2006

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed